

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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MARSHALL A KHAN,

Plaintiff,

vs.

ANDREW SAUL, Commissioner of Social  
Security

Defendant.

Case No. 2:21-cv-00003-KJD-VCF

**Report and Recommendation to  
Administratively Close Case**

*APPLICATION TO PROCEED IN FORMA  
PAUPERIS* (EFC NO. 6)

The Court previously denied pro se plaintiff Marshall A Khan's application to proceed in forma pauperis (ECF No. 1) because he altered the Court's Short Form<sup>1</sup>: the Court found that his alterations supported a finding that he was concealing his financial information and the Court ordered that he either submit the Court's long form in forma pauperis application or pay the filing fee. (ECF No. 4). Khan has now filed his own typed version of an in forma pauperis application (it does not address his finances) (ECF No. 6) rather than filing the long form application per the Court's order. The Court recommends denying Khan's new in forma pauperis application. (ECF No. 6). Since a complaint has not been lodged in this matter given that plaintiff has not paid the filing fee or complied with this Court's order regarding his in forma pauperis application, the Court also recommends administratively closing this case.<sup>2</sup>

**DISCUSSION**

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<sup>1</sup> The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated persons. The Long Form requires more detailed information than the Short Form.

<sup>2</sup> Plaintiff Khan's case is not a social security appeal: it appears that he is seeking a refund of the money he has paid into Social Security through this action. (ECF No. 1-1).

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). The applicant's affidavit must state the facts regarding the individual's poverty “with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he “failed to verify his poverty adequately”). If the court determines that an individual's allegation of poverty is untrue, “it shall dismiss the case.” 28 U.S.C. § 1915(e)(2).

The court typically does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears that the plaintiff is concealing information about his income for determining whether the applicant qualifies for in forma pauperis status. When an applicant is specifically ordered to submit the Long Form, the correct form must be submitted, and the applicant must provide all the information requested in the Long Form so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v. NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov. 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL, 2016 WL 7493963 (D. Nev. Dec. 30,

1 2016).

2 The Court found in its previous order that Khan altered the Court's Short Form: for example, he  
3 changed the caption to read "For the Republic District of Nevada" and he changed question 8, which  
4 asks if the pro se litigant has "[a]ny debts or financial obligations, to "any debts or financial trickery."  
5 (See ECF No. 4, citing to ECF No. 1 at 2). Plaintiff also stated that he is financially reliant upon his  
6 wife, but he did not include his wife's income in his application. (*Id.*) The Court found that since he  
7 altered the Short Form and omitted information regarding his wife's income, that plaintiff was  
8 concealing information about his household income and the Court could not determine whether the  
9 Khan qualified for informia pauperis status. (*Id.*) The Court ordered that the plaintiff must complete the  
10 Long Form application and he must not alter the form (or alternatively pay the filing fee). (ECF No. 4 at  
11 2-3).

12 Plaintiff did not file the Long Form or pay the filing fee per the Court's order. Plaintiff instead  
13 filed a nine-page typed "application to proceed informia pauperis" (it is not the Court's Long Form  
14 application). (ECF No. 6). Plaintiff asks the Court for a "definition of U.S. Citizen, or so-called U.S.  
15 Citizen" and he goes on to explain the merits of his underlying complaint, such as why the Social  
16 Security Act does not require a person to have a social security number to live and work in the United  
17 States. (*Id.* at 2). Plaintiff also does not address his finances, including his wife's income, in his version  
18 of the application. (*Id.*) Since Khan has not complied with the Court's order or paid the filing fee, the  
19 Court recommends that his application at ECF No. 6 be denied. The Court also recommends that this  
20 case be administratively closed.  
21

22 ACCORDINGLY,

23 IT IS RECOMMENDED that Khan's new application to proceed in forma pauperis (ECF No. 6)  
24 be DENIED.  
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1 IT IS FURTHER RECOMMENDED that this action be administratively CLOSED.

2 **NOTICE**

3 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
4 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
5 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
6 may determine that an appeal has been waived due to the failure to file objections within the specified  
7 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

8 This circuit has also held that (1) failure to file objections within the specified time and (2)  
9 failure to properly address and brief the objectionable issues waives the right to appeal the District  
10 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
11 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).  
12 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any  
13 change of address. The notification must include proof of service upon each opposing party's attorney,  
14 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may  
15 result in dismissal of the action.  
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17 IT IS SO ORDERED.

18 DATED this 25th day of January 2021.

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20 CAM FERENBACH  
21 UNITED STATES MAGISTRATE JUDGE  
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